STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
QUENTIN RIVERS	:	DETERMINATION DTA NO. 819200
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Year 1998.	:	

Petitioner, Quentin Rivers, c/o 291 Patchen Avenue, Apt. 5E, Brooklyn, New York 11233, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the year 1998.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York on February 18, 2004 at 1:15 P.M. Petitioner appeared by Garry Webb-Bey. The Division of Taxation appeared by Mark F. Volk, Esq. (Susan Parker).

Since neither party herein elected to reserve time to file a post-hearing brief, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUES

I. Whether the Division of Taxation properly determined that petitioner owed additional New York State and City personal income tax for the 1998 tax year based on the results of an audit conducted by the Internal Revenue Service.

II. Whether the petition filed herein is frivolous and, if so, whether petitioner should be held liable for the maximum penalty of $500.00 imposed pursuant to Tax Law § 2018 for the filing of a frivolous petition.

FINDINGS OF FACT

1. On or about April 13, 1999, petitioner herein, Quentin Rivers, filed a timely 1998 New York State and City resident personal income tax return as a single individual. Although petitioner signed the return, he placed the statement "without prejudice" after his signature.

2. Petitioner's 1998 return listed his address as c/o 291 Patchen Avenue, Apt. 5E, Brooklyn, New York and this same address was also shown on Form W-2, Wage and Tax Statement 1998 ("Form W-2"), which was attached to the return.

3. The Form W-2 attached to petitioner's 1998 return identified petitioner's employer as Dean Witter Reynolds Inc., 2 World Trade Center, New York, NY 10048. Form W-2 reported wages, tips, other compensation of $28,268.77 in box 1 and also reported this same amount as New York State wages in box 17 and New York City wages in box 20. No Federal, New York State or New York City income taxes where withheld from the wages petitioner received from Dean Witter Reynolds Inc.

4. The 1998 return filed by petitioner reported wage income of $28,268.77 on line 1 and claimed a corresponding $28,268.77 adjustment to income on line 17, thus producing an adjusted gross income figure of "0.00." A handwritten notation on line 17 of petitioner's return indicated

that the $28,268.77 adjustment to income was from "Form 2555." Other than the entries for wages and the adjustment to income, every other line on petitioner's return reported "0.00."

5. Petitioner's U.S. Individual Income Tax Return for 1998 was filed in a manner consistent with his 1998 New York State and City income tax return, i.e., it reported wages of $28,268.77, an adjustment to income of $28,268.77 which resulted in no adjusted gross income and the rest of the return reported "0.00." Attached to petitioner's 1998 Federal return was Form 2555-EZ, Foreign Earned Income Exclusion. On Form 2555-EZ petitioner claimed that he was a bona fide resident of a foreign country for all of 1998 and that he was physically present in a foreign country for a least 330 days during 1998. In the "General Information" section of Form 2555-EZ petitioner claimed that his foreign address was "c/o 291 Patchen Avenue, Apt. 5E, Brooklyn, New York State, 11233, America" and that his employer's (Dean Witter Reynolds Inc.) foreign address was "2 World Trade Center, New York, New York State, 10048, America."

6. On September 27, 2000, the Internal Revenue Service ("IRS") issued Form 4549-CG, Income Tax Examination Changes, to petitioner indicating that $3,214.00 of Federal income tax was due for the 1998 tax year. The additional tax due was computed as follows:

ITEM	**AMOUNT**
Wages	$28,399.00
Exemptions	(1,000.00)
Standard Deduction	(4,250.00)
Taxable Income	$21,449.00
Tax Due	$3,214.00

7. On January 5, 2001, the IRS issued a Notice of Deficiency to petitioner asserting that $3,214.00 of tax was due for 1998, together with interest and penalties for late filing and for failure to pay estimated income taxes. Petitioner did not file a petition with the United States

Tax Court contesting the additional tax due asserted by the IRS in its Notice of Deficiency dated January 5, 2001. The record herein contains no evidence to establish that as of the date of this hearing the IRS or other competent authority modified, changed, revised or corrected the determination that petitioner's Federal adjusted gross income for 1998 was $28,399.00.

8. On some unknown date prior to February 8, 2002, the Division of Taxation ("Division") received information from the IRS which contained the results of the examination of petitioner's 1998 Federal income tax return. The Division thereafter conducted a search of its records and determined that petitioner had not reported the IRS audit changes to the Division as required by Tax Law § 659. Accordingly, on February 8, 2002, the Division issued a Notice of Additional Tax Due to petitioner wherein New York adjusted gross income was increased to $28,399.00, the same adjusted gross income figure as was determined by the IRS pursuant to its examination of petitioner's 1998 Federal income tax return. The Notice of Additional Tax Due asserted additional New York State and City personal income tax due of $1,812.00, plus interest.

9. Petitioner protested the Notice of Additional Tax Due dated February 8, 2002 by filing a petition with the Division of Tax Appeals. Petitioner asserts in the petition that, "My tax return for the year in question was changed without the statutory and/or regulatory authority of law. The NYS Dept. of Taxation & Finance denied me due process of law." In its Answer to the petition, the Division requested "that the Division of Tax Appeals impose the maximum penalty of $500.00 for filing a frivolous petition pursuant to Tax Law § 2018 and 20 NYCRR 3000.21 because there is no basis alleged in the petition to abate the tax."

SUMMARY OF PETITIONER'S POSITION

10. Petitioner asserts that the IRS did not conduct a proper audit in that it never called him in to substantiate the 1998 Federal return as filed and that it failed to allow him an opportunity to

submit evidence and argument in support of his 1998 return. Petitioner believes that the IRS denied him due process of law and for this reason the IRS audit is arbitrary and not a binding determination. Petitioner maintains that since the IRS's audit is arbitrary and not binding, the Division's assessment, which is based solely on the Federal determination, must also be considered arbitrary and not binding.

CONCLUSIONS OF LAW

A. As relevant to this proceeding, Tax Law § 659 provides that:

> If the amount of a taxpayer's federal taxable income . . . is changed or corrected by the United States internal revenue service or other competent authority . . . the taxpayer shall report the change or correction or disallowance (to the Division) within ninety days after the final determination of such change, correction . . . and shall concede the accuracy of such determination or state wherein it is erroneous.

B. In the instant matter, the record supports that the final Federal determination for the 1998 tax year occurred on April 6, 2001, the 91st day after the IRS's issuance of the Notice of Deficiency. The IRS's Notice of Deficiency for 1998 became an assessment on April 6, 2001 due to petitioner's failure to contest the notice by filing a petition for redetermination with the United States Tax Court. Although petitioner has stated that he disagrees with the IRS audit changes for 1998 and has been engaged in a "paper war" with the IRS, there is no evidence to show that this matter has been or is being reviewed by the IRS or other competent authority.

C. Although petitioner claims that the IRS denied him due process of law and that its audit is arbitrary, the record does not support such claims. By issuing a Notice of Deficiency to petitioner for 1998, the IRS afforded petitioner the right to protest the proposed changes by filing a petition with the United States Tax Court. Petitioner, however, chose not to avail himself of these protest rights, and therefore, I do not see where his due process rights were violated.

Petitioner's argument that the audit is arbitrary is also without merit. In ***Solomon v. Commr.*** (66 TCM 1201), the Tax Court concluded that a taxpayer who lived in the State of Illinois and received wage income from International United Auto had "no foreign income and is not a qualified individual for purposes of section 911." The Court further stated that:

> Petitioner attempts to argue an absurd proposition, essentially that the State of Illinois is not part of the United States. His hope is that he will find some semantic technicality which will render him exempt from Federal income tax, which applies generally to all U.S. citizens and residents. Petitioner's arguments are no more than stale tax protester contentions long dismissed summarily by this Court and all other courts which have heard such contentions.

The conclusion reached by the Tax Court in ***Solomon*** is equally applicable here. Petitioner lived and worked in the State and City of New York and is not entitled to exclude his wage income from taxation as income earned from foreign sources. The Tax Appeals Tribunal has also visited this issue and concluded that New York State, by definition, cannot be considered a foreign country (***see, Matter of Nicholson,*** Tax Appeals Tribunal, October 30, 2003). As noted in ***United States v. Romero*** (640 F2d 1014):

> Compensation for labor or services, paid in the form of wages or salary, has been universally, held by the courts of this republic to be income, subject to the income tax laws currently applicable. We recognize that the tax laws bear heavily on all persons engaged in gainful activity, and recognize the right of a taxpayer to minimize his taxes by all lawful means. But Romero here is not attempting to minimize his taxes; instead he is attempting willfully and intentionally to shift his burden to his fellow workers by use of semantics. He seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance, all to the detriment of the common weal and of themselves.

D. Since the Division's assessment for 1998 was based on the IRS audit findings and since there is no evidence before me to show that the Federal audit findings for 1998 are erroneous or have in any way been changed, corrected, revised or modified by the IRS or other

competent authority, it must be concluded that the Division's assessment is valid and correct. It should be noted, however, that petitioner is not without relief in the event he is successful in getting the IRS or other competent authority to revise the audit findings for 1998. If such a revision does occur, petitioner would be required, pursuant to Tax Law § 659, to report such change within 90 days of the date the change became final.

E. With respect to the frivolous petition issue, Tax Law § 2018 provides as follows:

> **Frivolous petitions.--** If any petitioner commences or maintains a proceeding in the division of tax appeals primarily for delay, or if the petitioner's position in such proceeding is frivolous, then the tax appeals tribunal may impose a penalty against such petitioner of not more than five hundred dollars. The tax appeals tribunal shall promulgate rules and regulations as to what constitutes a frivolous position.

The Tribunal's regulations, specifically 20 NYCRR 3000.21, provide that the Tribunal may on its own motion impose the Tax Law § 2018 penalty. Said regulation further provides that the following are examples of frivolous positions:

> (a) that wages are not taxable as income;
>
> (b) that petitioner is not liable for income tax because petitioner has not exercised any privileges of government;
>
> (c) that the income tax system is based on voluntary compliance and petitioner therefore need not file a return;
>
> (d) that Federal Reserve Notes are not "legal tender" or "dollars," and petitioner therefore cannot measure his or her income; and
>
> (e) that only states can be billed and taxed directly.

F. In the instant matter the record clearly reflects that petitioner's position is frivolous and has no basis in fact or law. Accordingly, a penalty of $500.00 is hereby imposed pursuant to Tax Law § 2018 and 20 NYCRR 3000.21 on the grounds that petitioner's position in this proceeding is frivolous. In ***Solomon,*** the Tax Court imposed a penalty of $5,000.00 for filing a frivolous

petition noting that "petitioner has raised only tired, discredited arguments which are characterized as tax protester rhetoric. A petition to the Tax Court is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law." The Tax Appeals Tribunal has also consistently held that the frivolous petition penalty was properly imposed against tax protesters (***see, Matter of Nicholson, supra; Matter of Thomas,*** Tax Appeals Tribunal, April 19, 2001; ***Matter of Ellett,*** Tax Appeals Tribunal, October 18, 2001).

G. The petition of Quentin Rivers is in all respects denied; the Notice of Additional Tax Due, dated February 8, 2002, is sustained and, in accordance with Conclusion of Law "F", penalty of $500.00 is hereby imposed for the filing of a frivolous petition.

DATED: Troy, New York
May 6, 2004

/s/ James Hoefer
PRESIDING OFFICER